MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ANOR.

v.

LIM GUAN ENG & ANOTHER CASE

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID OMAR LP
HASHIM YEOP SANI CJ (MALAYA)
AJAIB SINGH SCJ
[CRIMINAL APPEAL NO. 61 OF 1988]
24 FEBRUARY 1989

ADMINISTRATIVE LAW: *Habeas corpus - Respondent who was represented by Counsel discharged himself - Respondent wanted to present his case personally - Objection by Attorney General's Department to production of respondent in Court - Learned Judge ordered respondent to be produced on date of hearing - Appeal by Public Prosecutor against that decision - Respondent not advocate and solicitor - Whether trial Judge exercised discretion properly - Rule 93(1) of Internal Security (Detained Persons) Rules 1960.*

This was an appeal by the Public Prosecutor against the decision of the learned Judge which ordered the respondent to be produced at the respondent's request, on the date of hearing an application for *habeas corpus* after his Counsel had discharged himself.

Held:

[1] The trial Court and the Supreme Court in *Minister for Home Affairs, Malaysia v. Karpal Singh s/o Ram Singh* [1988] 2 SCR 124 had firmly affirmed the principle that where the issue of a writ of *habeas corpus* is sought, it is not the practice to allow the presence of the detainee.

[2] In the view of the Supreme Court the trial Judge has not exercised its discretion properly.

[3] A detainee discharging his solicitor in order to argue his own case or that he prefers to act as his own advocate can never by itself be a sufficient reason to issue an order to produce under r. 93(1) of the Internal Security (Detained Persons) Rules 1960.

[Order of High Court set aside.]

Cases referred to:
Minister for Home Affairs, Malaysia v. Karpal Singh s/o Ram Singh [1988] 2 SCR 124
In re Greene [1941] TLR 533

Legislation referred to:
Internal Security (Detained Persons) Rules 1960, r. 93(1)

For the appellants - Abu Talib bin Othman, Attorney General of Malaysia & Ng Aik Guan, DPP.

JUDGMENT

Hashim Yeop Sani CJ (Malaya):

The history of this case has been elaborately set out in the judgment of the trial Judge but briefly they are as follows. The respondent was detained under the Internal Security Act 1960 on 20 July 1988. He filed an application for *habeas corpus* which application was scheduled for hearing on 12 August 1988. The respondent was then represented by Counsel. On 9 August 1988 the solicitors for the respondent wrote to the Senior Assistant Registrar,

High Court, Melaka requesting for the Court to issue an order to produce the respondent on the date of hearing on 12 August 1988 The Senior Assistant Registrar replied by letter dated 10 August 1988 that the Judge, for reasons given in the letter, declined to issue the order requested for. On the same date, that is, 10 August 1988 the solicitors informed the Senior Assistant Registrar that the respondent had discharged them as solicitors stating that the respondent wanted to present his case personally. The solicitors applied to the Court to be discharged.

In the meanwhile the Attorney General's Department by letter dated 11 August 1988 sent a letter to the Senior Assistant Registrar objecting to the request for the production of the respondent. A telegram was sent to the respondent by the Senior Assistant Registrar requesting the respondent to provide sufficient reasons for his application for the order to produce.

On the date of the scheduled hearing, that is 12 August 1988, a telegram was sent by the respondent to the Senior Assistant Registrar confirming that he had discharged his solicitors "with immediate effect" and requested for the issue of an order for his production in Court. The learned Judge informed the Federal Counsel in Court that he was adjourning the case to enable the respondent to file a formal affidavit. On 19 August 1988 the learned Judge delivered a written judgment and ordered that the respondent be produced on the subsequent date of hearing. On 22 August 1988 the Public Prosecutor appealed against that decision.

The respondent is not a lawyer although he said he is doing an external degree course in law. He was not produced before the trial Judge nor at this appeal. But his affidavits were considered by the Judge and formed part of the appeal record and for this appeal we also have the advantage of reading his written submission.

It is obvious that the order the respondent had requested for was an order to produce under r. 93(1) of the Internal Security (Detained Persons) Rules 1960 which provision reads as follows:

> Whenever the presence of a detained person **is required by any Court** of civil or criminal jurisdiction such Court may issue an order addressed to the superintendent requiring production before the Court of such person at the time and place to be named in such order, and the said superintendent shall cause the person named in such order to be brought up as directed, and every such Court may by endorsement on such order require the person named therein to be again brought up at any time to which the matter wherein such person is required may be adjourned. (Emphasis supplied).

This rule was already examined by this Court in *Minister for Home Affairs, Malaysia v. Karpal Singh s/o Ram Singh* [1988] 2 SCR 124. In that case it would seem quite clear to anyone there were many reasons which the trial Judge found acceptable as to why he should require the presence of the detainee. One reason was to enable Mr. Karpal Singh to argue his own case as he was an advocate and solicitor having wide experience in *habeas corpus* applications.

In *Karpal Singh's* case both the trial Court and the Supreme Court firmly affirmed the principle that where the issue of a writ of *habeas corpus* is sought, it is **not** the practice to allow the presence of the detainee. It is clear from his judgment that the trial Judge in the present case was aware of both *In re Greene* [1941] TLR 533 and also the Supreme Court cases referred to above. He however considered that the circumstances of the case before him

exempted him from being bound by precedent. In his opinion the respondent had sufficient reasons to discharge his solicitors. According to him the respondent fell into a category of one who was "forced by circumstances to appear in person".

With all due respect we are not at all persuaded by the reasoning of the trial Judge. In our view his discretion was not properly exercised. The interpretation of the r. 93(1) has already been settled by this Court and we do not propose to go beyond what has already been said in *Minister for Home Affairs, Malaysia v. Karpal Singh* (*supra*). In delivering the judgment of this Court the Acting Lord President said:

> We are of the view that r. 93(1) on its proper construction, cannot be invoked to secure the presence of a detainee in any criminal or civil Court notwithstanding that it is the detainee's choice to argue his own case. The rule clearly envisages that the discretion should only be exercised in circumstances where the Court itself requires the presence of the detainee, for instance, where the Court is satisfied that a detainee is a necessary witness to a criminal or civil matter before the Court, or where it would occasion a failure of justice to deny the presence of a detainee to argue his own case.

A detainee discharging his solicitors in order to argue his own case or that he prefers to act as his own advocate can never by itself be a sufficient reason to issue an order to produce under r. 93(1). In this case the excuse that the respondent's Counsel was unable to get adequate instructions is not easily acceptable. The facts of this case and the chronology of events clearly show that the respondent deliberately discharged his solicitors so that he could ask to be produced in person.

The order of the learned Judge must accordingly be set aside.

Appeal allowed.

Also found at [1989] 1 CLJ 906